

Investigation by the Department of Telecommunications and Energy on its own motion to determine the need for new area codes in Eastern Massachusetts and whether measures could be implemented to conserve exchange codes within Eastern Massachusetts.

ORDER TO CLOSE INVESTIGATION

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ORDER TO CLOSE INVESTIGATION

I. BACKGROUND

On April 24, 1998, the Department of Telecommunications and Energy ("Department") opened an investigation into area code conservation measures to evaluate ways to delay the need to introduce new area codes in Massachusetts.¹ In the Order opening this investigation, the Department stated that it would address (1) where and how existing telephone numbers are being used, (2) whether measures could be implemented to conserve numbering resources within Eastern Massachusetts, and (3) whether there is a need for area code relief at the time. The Department also stated that it would look at the related issues of (1) the rationing process used for assigning the remaining exchange codes in the 508 and 617 area codes, and (2) the process by which Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon"), formerly New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, assigns exchange codes in the 781 and 978 area codes.

II. PROCEDURAL HISTORY

A. D.T.E. 98-38 and Related Proceedings

On May 20, 1998, the Department conducted a public hearing on this matter and accepted comments from the public, acknowledged the intervention of the Attorney General for the Commonwealth ("Attorney General"), and granted intervenor status to several carriers

¹ Area Code Conservation, D.T.E. 98-38 (1998).

within the telecommunication industry (collectively, "Industry Group").² During the ensuing months, the Department investigated the issues set forth in its April 24 Order. The Department held a technical conference on June 1, 1998, to discuss virtual pooling as one method of code conservation. The Department issued subpoenas duces tecum to all carriers requesting information that would allow the Department to conduct further analysis of virtual pooling and other conservation measures.

The initial scope of the Department's code conservation investigation was broad, examining a variety of methods to conserve exchange codes, including virtual number pooling,³ rate center consolidation ("RCC"),⁴ and unassigned number porting ("UNP").⁵ At the time,

² The intervenors include Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS"); Bell Atlantic Mobile, now Verizon Wireless; MCI Telecommunications Corporation, now WorldCom, Inc. ("WorldCom"); Verizon; AT&T Communications of New England, Inc., ("AT&T") and Wireless PCS, Inc., a wholly-owned subsidiary of AT&T Wireless Services, Inc., d/b/a AT&T Wireless Services; Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One, now Cingular; SAS Security Systems; Nextel Communications of the Mid-Atlantic, Inc. ("Nextel"); Omnipoint Communications MB Operations, LLC; RCN-BecoCom, L.L.C. ("RCN BecoCom"); Teleport Communications, now part of AT&T; SNET Cellular, Inc.; Teligent, Inc.; MediaOne Telecommunications of Massachusetts, Inc., now AT&T Broadband; Sprint Communications Corporation, LP; New England Cable Television Association, Inc.; and XCOM Technologies, Inc., now part of Level 3 Communications, Inc.

³ Under virtual number pooling, carriers would divide exchange codes into thousand-number blocks and assign phone numbers from the first thousand-number block until it was nearly exhausted. Only then would the next thousand-number block be open for use. By preserving as many untapped (or uncontaminated) thousands-number blocks for as long as possible, virtual pooling serves as a "bridge" until thousands-block number pooling is available. (See footnote 11, below, for the definition of thousands-block number pooling.)

⁴ A rate center is a geographic location. Each customer's telephone number is assigned to a particular rate center. The distance between two rate centers is used to determine (continued...)

virtual number pooling showed some promise. The Department examined proposals for virtual number pooling filed by NeuStar,⁶ the Attorney General,⁷ and the Industry Group.⁸ A majority of telecom carriers voluntarily operated under the industry guidelines for virtual pooling from August, 1998 until 2001, when thousands-block number pooling ("TNP") became effective in Massachusetts (see discussion, below).

On September 28, 1998, the Federal Communications Commission ("FCC") issued a Memorandum Opinion and Order in which it outlined state commission authority to order the implementation of exchange code conservation methods. In the Pennsylvania Numbering

⁴ (...continued)
the category for some telecommunications services. The configuration of rate centers thus determines whether calls are toll or local calls. There are currently 202 rate centers in Eastern Massachusetts (i.e., all of Massachusetts save for the 413 area code). Under the current system, carriers must obtain at least one full exchange code (i.e., 10,000 numbers) in every rate center in each geographic area they wish to serve. If a carrier wished to serve customers throughout Eastern Massachusetts, the carrier would need to request over two million telephone numbers, no matter how many customers (or how few) it expected actually to serve. Rate center consolidation would reduce the number of rate centers, thus reducing the amount of excess numbers carriers would need to obtain in order to serve a given geographic area.

⁵ UNP allows sharing between carriers of the many unassigned numbers within existing exchange codes that do not fall within untapped thousands-blocks.

⁶ The North American Numbering Plan Administrator ("NANPA") is currently NeuStar, Inc.

⁷ On June 3, 1998, the Attorney General filed a motion for an emergency ruling to preserve number conservation options for area codes 508, 617, 781, and 978 by imposing the use of virtual pooling beginning June 1, 1998. The Department's actions on April 25, 2000, instituting four new overlay codes in Massachusetts and the introduction of thousands-block number pooling in 2001, renders the Attorney General's motion for an emergency ruling moot.

⁸ See footnote 2 above.

Order,⁹ the FCC greatly restricted the ability of state commissions to implement code conservation methods, including virtual number pooling, without prior FCC approval. The FCC continued to allow states to order rate center consolidation without prior FCC approval, however. Until the FCC issued this decision, the Department had been investigating several types of code conservation measures, including virtual pooling and rate center consolidation, as ways to delay implementation of new area codes in Eastern Massachusetts. The Pennsylvania Numbering Order altered the Department's code conservation efforts and required the Department to shift its focus to rate center consolidation.

In response, the Department changed the scope of D.T.E. 98-38 to (1) investigating rate center consolidation and other code conservation methods, (2) encouraging voluntary code conservation, and (3) pursuing additional delegation of authority from the FCC to conserve exchange codes. On January 26, 1999, the Department issued a Vote To Open Adjudication.¹⁰

⁹ Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utilities Commission Regarding Area Codes 412, 610, 215, and 717, CC Docket No. 96-98, Memorandum Opinion and Order on Reconsideration, FCC 98-224 (rel. September 28, 1998) ("Pennsylvania Numbering Order"). In this Order, the FCC held that states, through their state public utility commissions, are authorized to order rationing of exchange codes and other conservation measures like virtual pooling only (1) after an area code relief plan has been implemented, and (2) where the state's telecommunications industry has not reached a consensus on an exchange code rationing plan.

¹⁰ Also in January 1999, the Department opened an investigation, docketed as D.T.E. 99-11, to review alternative area code relief plans proposed by Lockheed, the NANPA at the time, for the 508, 617, 781, and 978 area codes in Eastern Massachusetts. This docket was opened in response to the approaching exhaust dates for these area codes.

The Department held an additional public hearing, and invited additional intervention.¹¹

The rate center consolidation phase of this investigation assessed two alternative plans filed by the Attorney General on March 19, 1999: a regional-consolidation plan and a single-rate-center plan. The regional plan would have consolidated the existing 202 rate centers in Eastern Massachusetts into 25 rate centers. The single rate center plan would have consolidated the 202 rate centers into one rate center for all of Eastern Massachusetts. Verizon submitted feasibility studies addressing these two plans. The Department has conducted extensive discovery, taken testimony and comments, and held hearings and technical sessions to evaluate the merits of the two rate center consolidation proposals. In addition to rate center consolidation, the Department issued a request to carriers on February 18, 1999 to return voluntarily exchange codes they no longer needed.

In conjunction with its D.T.E. 98-38 investigation, the Department sought to obtain additional code conservation authority from the FCC. On September 15, 1999, the FCC, in large part, granted the Department's petition. In the Matter of Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, CC Docket No. 96-98, NSD File No. L-99-19, Order, FCC 99-246 (rel. September 15, 1999). Specifically, the FCC gave the Department conditional authority to "institute thousands-block

¹¹ Subsequently, the Hearing Officer granted intervention status to NetworkPlus, Inc., Focal Communications Corporation, Global NAPs, Inc., CTC Communications Corp., and NextLink MA, Inc. The Hearing Officer also granted limited participant status to New England Voice and Data of Massachusetts, now Conversent Communications, and Michael Sullivan.

pooling trials; reclaim unused and reserved exchange codes, and portions of those codes; maintain rationing procedures for six months following area code relief; set numbering allocation standards; and hear and address claims of carriers seeking numbering resources outside of the rationing process.” Id. at 1. The FCC found that the Department already had the authority to authorize carriers to use inconsistent rate centers and extended local calling areas. Id. Finally, the FCC denied the Department’s request for authority to implement UNP and declined to address the Department’s request to revise code rationing procedures. Id.

Using this grant of additional authority from the FCC, the Department opened docket D.T.E. 99-99 on October 12, 1999, to investigate thousands-block number pooling¹² trials for Eastern Massachusetts. Proceeding by the Department of Telecommunications and Energy to Conduct Mandatory Thousands-block Number Pooling Trials, D.T.E. 99-99 (1999) (“Number Pooling Order”). The Department subsequently received authority from the FCC to conduct number pooling trials for the whole state.¹³

¹² TNP is a method of conserving telephone numbers by distributing them to carriers more efficiently. In areas where TNP is not implemented, telephone numbers are assigned to carriers in blocks of 10,000 numbers. With TNP, telephone numbers are given out in thousands-blocks rather than ten-thousands-blocks (full exchange codes), in an effort to reduce the amount of idle number-inventory held by carriers. Carriers donate their excess inventory of unused or minimally-used thousands-blocks to a pool, from which carriers are assigned new telephone numbers as needed. TNP is based on local number portability technology, which allows telephone numbers to be ported between carriers within a given rate center (i.e., a customer can keep his number when switching carriers within a rate center). Wireless carriers are not required by the FCC to participate in TNP until late 2002.

¹³ In the Matter of the Massachusetts Department of Telecommunications and Energy Petition for Delegation of Additional Authority to Implement Number Conservation Measures in Massachusetts, NSD File No. L-00-169, Order, DA 01-386 (rel.

(continued...)

Beginning in January 2000, the Department restricted number assignments by imposing a 75 percent fill-rate on carriers seeking additional numbering resources in any rate center in the 508, 617, 781 and 978 area codes. Carriers were required to demonstrate that they have assigned 75 percent of the numbers within each thousands-block before opening up a new thousands-block. The Department's fill-rate requirements, as implemented, had nearly the same effect as virtual pooling. The Department's authority to impose fill-rates has been superseded by the FCC, which has since ordered the implementation of a uniform nationwide fill-rate, beginning at 60 percent and increasing to 75 percent.

On April 25, 2000, the Department issued an Order in D.T.E. 99-11/99-99 stating that the implementation of mandatory thousands-block pooling was not then a practical solution for prolonging the lives of any of the four Eastern Massachusetts area codes. The Department also noted that rate center consolidation would not forestall the need for new area codes where area codes near depletion. TNP authority, while promising, had come too late to prevent the need for Eastern LATA area code relief. The Department called for the creation of four new overlay codes for the 508, 617, 781, and 978 area codes.

On May 4, 2000, the Department requested comments from the parties in D.T.E. 98-38¹⁴ on the continued merit and feasibility of conducting RCC in Massachusetts. The Department received comments from the Attorney General, Nextel, Verizon, WorldCom,

¹³ (...continued)
February 14, 2001).

¹⁴ Allegiance Telecom of Massachusetts, Inc. submitted comments and reply comments in response to the Department's request for comments. Allegiance Telecom is not a party to this proceeding.

RCN-BecoCom, Sprint PCS, and State Senator Charles Shannon. The Department received reply comments from RCN-BecoCom and Verizon.

B. Requests for Confidential Treatment

Over the course of the Department's investigation, the Department granted parties' requests for confidential treatment of responses to many of the Department's information requests.¹⁵ Much of this information consists of numbering resources and forecasting data. The Attorney General also issued information requests to the parties,¹⁶ and some of the parties have requested confidential treatment of their responses to the Attorney General's information requests.¹⁷

¹⁵ Specifically, the Department has granted confidential treatment for the following responses: responses to subpoenas issued by the Department on June 8, 1998 (confidential treatment granted by Hearing Officer on June 11, 1998); responses to the Department's Second Round of Information Requests issued September 17, 1998, and reissued November 4, 1998 (confidential treatment granted by Hearing Officer on September 17, 1998, and November 4, 1998); responses to the Department's Third through Sixth Round of Information Requests issued February 16, 18, 26, 1999, March 19, 22, 1999 (confidential treatment granted by Hearing Officer on August 19, 1999); responses to update request issued August 19, 1999 (confidential treatment granted by hearing Officer on August 19, 1999).

¹⁶ The Attorney General information requests at issue here were filed June 4, 1998, July 10, 1998, and March 8, 1999.

¹⁷ The thirteen unresolved requests for confidential treatment are from: Verizon Wireless (formerly Bell Atlantic Mobile) (July 17, 1998), Nextel (July 17, 1998 and March 22, 1999), Cingular (formerly Cellular One) (July 17, 1998), SNET Cellular (July 20, 1998), Level 3 (formerly XCOM) (July 28, 1998), AT&T and AT&T Wireless (September 17, 1998 and March 19, 1999), Teligent (March 16, 1999), Omnipoint (March 18, 1999), WorldCom (formerly MCI) (March 18, 1999 and March 25, 1999), and AT&T Broadband (formerly MediaOne) (March 23, 1999).

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that the Department may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review.

In discovery, the Attorney General requested information similar to the information previously protected by the Department in this proceeding. See footnote 15, above. In addition, the Department has granted confidential treatment to number resource utilization and forecasting data in other proceedings. See Western LATA Area Code Relief, D.T.E. 00-64, Letter from Hearing Officer Request for Additional Forecasting and Utilization Data, (October 5, 2001). Furthermore, the FCC has recognized the confidential nature of number utilization and forecast data. See Numbering Resource Optimization, CC Docket No. 99-200, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, FCC 01-362, ¶ 136 (rel. December 28, 2001); Numbering Resource Optimization, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rule Making, FCC 00-104, ¶ 78 (rel. March 31, 2000). Because the Attorney General's information requests ask for number resource utilization and forecasting data, the Department grants the parties' thirteen unresolved requests for confidential treatment of information request

responses in this docket. The confidential treatment of these responses shall be limited; the protected status granted here shall expire two years from the date of this Order. At that time, any party seeking to extend the protected status of its responses may motion the Department and show good cause why the responses should be protected further.

III. CURRENT CODE CONSERVATION EFFORTS

Until last year, NANPA was responsible for verifying that codeholders put their numbering resources (“codes” or “NXXs”) into service in a timely manner, and had the authority to reclaim codes from carriers that (a) had neither activated their NXXs nor received an extension, or (b) had ceased using the NXXs for the purpose for which they were assigned. On March 31, 2000, acting on the stated belief that state-level reclamation management may increase the effectiveness of state-level number conservation measures, the FCC took reclamation authority away from NANPA and delegated it to the states.¹⁸

The Department, having accepted the delegation of authority from the FCC, now administers the reclamation process in Massachusetts. Each month, NANPA sends the Department a list of carriers with overdue Part 4 confirmations.¹⁹ The carriers are then given the opportunity to cure the delinquency, or to excuse the delinquency and request an extension; otherwise, the Department may reclaim the code. Since August 2000, the Department has

¹⁸ In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, FCC 00-104, ¶¶ 232-241 (rel. March 31, 2000).

¹⁹ A Part 4 certification is a statement from a carrier that it has placed an NXX in service. See Central Office Code Assignment Guidelines NXX Assignment Request Form, Part 4.

reclaimed over 100 full exchange codes, containing a cumulative total of over one million telephone numbers. Reclamation of full exchange codes continues on a monthly basis. In area codes where number pooling is in effect, reclamation has now expanded to thousands-blocks in addition to full exchange codes.

On March 2, 2001, the Department opened Mandatory Thousands-Block Number Trials, D.T.E. 01-33 (2001), to implement state-wide number pooling.²⁰ In D.T.E. 01-33, the Department established a schedule for pooling trials by area code²¹ and designated NeuStar, Inc. as the interim pooling administrator to administer the pooling trials. Pooling trials are currently underway in Massachusetts in the 413 area code²² and in the four new overlay codes. Pooling trials for the remaining area codes are scheduled to be implemented by April 2002.

IV. COMMENTS

In his May 4, 2000 Request for comments, the Hearing Officer indicated that comments should focus on the effect of RCC on both the consumer and the industry, on changed circumstances due to the Department's Order requiring new overlay area codes, and on the merit and feasibility of conducting RCC in Massachusetts. The parties filing comments agree, with the exception of Verizon, that the Department should continue its investigation into RCC.

Parties indicate that RCC increases number allocation efficiency, and is a necessary part

²⁰ D.T.E. 01-33 superseded the Department's pooling investigation in D.T.E. 99-99, which investigated pooling in the original four Eastern LATA area codes only.

²¹ This schedule was revised on March 23, 2001.

²² The Department has opened an area code relief docket for the Western LATA. Petition of NeuStar, Inc. for an All Services Overlay, D.T.E. 00-64 (2000).

of any long term number conservation plan (Nextel Comments at 2; RCN BecoCom Comments at 2). Several parties argued that RCC allows numbering resources to be assigned in a more competitively neutral manner (RCN BecoCom Comments at 3). Some of the commenters downplayed the complexity and customer impacts of implementing RCC²³ (RCN BecoCom Comments at 3-4), while others acknowledged that there are outstanding issues to be resolved regarding implementation (WorldCom Comments at 1). WorldCom recommends that an industry task force is an effective way to explore RCC issues (WorldCom Comments at 1). The Attorney General urges the Department to investigate RCC in the Western LATA (area code 413) (Attorney General Comments at 1). Finally, Sprint PCS contends that the Department should implement wide area rate center²⁴ ("WARC") as a way to meet near term need for codes for wireless providers (Sprint PCS Comments at 9-13).

Verizon urges that the Department terminate its investigation into RCC in this docket, and to monitor the effects of thousands-block number pooling as a feasible and efficient code conservation and number optimization measure (Verizon Comments at 1-2). Verizon emphasizes the impact of RCC and associated costs. According to Verizon, altering the rate center configuration of Massachusetts would require expanding customers' local calling areas,

²³ RCN BecoCom raises RCC implementation in Texas as an example of successful implementation of RCC.

²⁴ With WARCs, a wireless carrier could use a single NXX code per area code (or per LATA), for calls from landline customers to mobile customers (Sprint Comments at 9-13).

and therefore shift toll calling to local calling (id. at 2).²⁵ Verizon states that this shift would necessitate a major rate redesign and rate restructuring of customers' local and toll rates (id. at 3). Verizon has estimated the impact of this change as an increase in basic telephone service in the range of \$12 to \$16 per month depending on service option and usage (id. at 3-4; Verizon Reply Comments at 3). Verizon also argues that implementing RCC would affect customers' optional calling plans and private line rates (Verizon Comments at 4).

Verizon further argues that implementation of RCC would require extensive and time-consuming changes to network, operational support, and billing systems (id. at 5). Verizon estimates that it would take 24-36 months to make these changes (id.). According to Verizon, no party has presented any credible demonstration that RCC will extend the lives of the area codes or numbering pools in Massachusetts, or will be useful for telephone number conservation (Verizon Reply Comments at 5; Verizon Comments at 6). Verizon contends that the costs clearly outweigh the benefits of RCC (Verizon Reply Comments at 2). Verizon concludes that the Department should focus its efforts on thousands-block number pooling as the preferred conservation method in Massachusetts (Verizon Comments at 7).²⁶

Finally, Verizon opposes Sprint PCS' request that the Department establish WARC.

Verizon states that a wireless WARC would turn all calls from a wireline customer to a

²⁵ Verizon differentiates the situation in Massachusetts from the situation in Texas, where RCC was implemented in 1998, pointing out that the Texas consolidation did not impact rates and involved a fraction of the rate centers compared with Massachusetts (Verizon Reply Comments at 4).

²⁶ The comments were filed before the Department had instituted number pooling beginning in 2001.

wireless customer in a particular exchange into local calls, regardless of the originating wire center (Verizon Reply Comments at 7). Verizon argues that such a proposal undermines Verizon's basic rate design and the Department approved tariffs (id.). Verizon urges the Department to reject Sprint PCS' proposal.

V. DISCUSSION

The point of this investigation into area code conservation was to avoid, if we could, implementing new area codes in the Eastern LATA. In D.T.E. 99-11/99-99, the Department's investigation revealed that the 508, 617, 781 and 978 area codes were too far depleted to be saved through either RCC or TNP or even a combination of the two. D.T.E. 99-11/99-99, at 18. The Department, therefore, had no alternative but to order the implementation of four new area codes. Thus the original point of the docket, to prevent the need for area code relief in the Eastern LATA, cannot be achieved.

Nonetheless, the parties urge that the Department proceed with its investigation into RCC to possibly forestall the need for future additional area codes. These parties contend that numbering resources will be more efficiently assigned after RCC is implemented. The Department agrees that numbering-resources optimization is a desirable goal, and the Department is actively pursuing that goal through number reclamation and number pooling. The Department has aggressively pursued the reclamation of unused numbering resources, and to date has recovered more than 100 full exchange codes. This pursuit has freed up over one million line numbers in the Eastern LATA. Now that thousands-block number pooling trials have begun, the Department is extending its reclamation efforts to thousands-blocks. In

addition, TNP is being implemented in phases by area code, starting in May 2001, and scheduled through April 2002. Although it is somewhat early in the implementation process, preliminary data show that number pooling appears to be having the desired effect on extending the lives of area codes.²⁷

Verizon has persuaded the Department that implementation of RCC involves considerable time and expense, and would likely lead to sharp increases in local rates (see Verizon Reply Comments at 3). Circumstances have changed considerably in the past two years (i.e., new area codes have been implemented and TNP is being rolled out throughout Eastern Massachusetts successfully). In weighing the likely costs and complexities of RCC against the possible benefits, we find that the public interest would be better served by focusing on TNP and reclamation code conservation as number optimization measures. Therefore, the Department finds that there is no longer a compelling interest in continuing this investigation. Accordingly, this investigation is closed.

²⁷ NeuStar estimates that TNP will add more than two years to the life of the 413 area code.

VI. ORDER

After hearing and consideration, it is

ORDERED: That this investigation is hereby closed.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).